

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:LM:FS:MAN:2:POSTF-146913-01
Akozoulina

date:

to: Paul D. DeNard, Director, Field Operations, LM:FS
Gerard A. Traficanti, Tax Law Specialist, ACC:INTL

from: Area Counsel, LMSB
(Financial Services)

subject: Consent to Extend the Statute of Limitations on Assessment for Tax
Year ending December 31, [REDACTED].

Taxpayer: [REDACTED]

EIN: [REDACTED]

Years: [REDACTED]

U.I.L. Nos. 6501.04-05

Statute of Limitations Expires: [REDACTED]

This memorandum responds to a request for assistance by the taxpayer. This memorandum should not be cited as precedent. Specifically, the taxpayer asked our office to provide the appropriate language to be used on a Form 872, Consent to Extend the Statute of Limitations on Assessment, by [REDACTED] (" [REDACTED] "), the wholly owned subsidiary of [REDACTED] (" [REDACTED] ") for the taxable year [REDACTED], and to determine the person authorized to sign such consent on behalf of the Service.

ISSUES:

1. Whether a restricted consent, which extends the statute of limitations with regard to only one or more specific issues, is appropriate when neither [REDACTED] nor its parent are under examination, but have requested the extension of time to make an election under Treas. Reg. § 301.9100 in [REDACTED], and the statute of limitations expires on [REDACTED]?
2. What is the appropriate language to be used on Form 872?
3. Who should sign the restricted Form 872 on behalf of the Service?

CONCLUSIONS:

1. A restricted consent is appropriate when neither [REDACTED] nor its parent are under examination, but requested the extension of time to make an election under Treas. Reg. § 301.9100 in [REDACTED], and the statute of limitations expires on [REDACTED].
2. The language on Form 872 should specify the issues which such consent is limited to - the dual consolidated loss rules. Suggested language is provided on page 5 of this Memorandum.
3. A restricted consent may be signed on behalf of the Service by any person who is authorized to sign such consents under Delegation Order No. 42, absent any redelegation order to the contrary concerning the signing of restricted consents. Currently, there is no redelegation order to the contrary concerning the signing of restricted consents. We suggest that the Financial Services Director of Field Operations or an appropriate Territory or Team Manager execute the consent on behalf of the Service. The taxpayer is in the Financial Services industry and qualifies as an LMSB taxpayer.

Facts:

[REDACTED] (" [REDACTED] ") (E.I.N. [REDACTED]) is the common parent of a U.S. affiliated group that filed consolidated federal income tax returns for the tax years ending December 31, [REDACTED], [REDACTED], and [REDACTED], respectively.

[REDACTED] wholly owns [REDACTED] (" [REDACTED] ") (E.I.N. [REDACTED]). For the tax year ended December 31, [REDACTED], an election under § 1504(d) was made to treat [REDACTED] as a domestic corporation for U.S. tax purposes. Therefore, all profits and losses of [REDACTED] flowed through to the consolidated group. [REDACTED] generated losses of \$ [REDACTED], \$ [REDACTED], and \$ [REDACTED] for the taxable years [REDACTED], [REDACTED], and [REDACTED], respectively.

The [REDACTED], [REDACTED], and [REDACTED] consolidated federal income tax returns for [REDACTED] included the operations of [REDACTED]. The statute of limitations for the year [REDACTED] expires on [REDACTED]. [REDACTED] is not currently under examination for any of the above taxable years. [REDACTED] though is the LMSB, Financial Services, taxpayer since its principal business activity is the brokerage business. Its principal place of business is at [REDACTED].

On [REDACTED], pursuant to Treas. Reg. § 301.9100-1 and

-3, [REDACTED] and the members of the U.S. consolidated group with [REDACTED] as their parent, filed a request with the National Office for extension of time to make an election under Treas. Reg. 1.1503-2(g)(2). We understand from attorney Gerard A. Traficanti of ACC:INTL that [REDACTED] complied with all the procedural requirements of Rev. Proc. 2001-1 related to the filing of such type of requests.

[REDACTED]'s request includes a detailed explanation of the reasons for not filing the election on time. [REDACTED] states in its request that it had relied on [REDACTED] to prepare its [REDACTED], [REDACTED], and [REDACTED] U.S. federal income tax returns, including any elections. The election statement and certification under Treas. Reg. § 1.1503-2(g)(2) to elect relief from the dual consolidated loss rules of I.R.C. § 1503(d) was not filed with the [REDACTED] return based on an erroneous, but reasonable interpretation that such election was not required. Instead, [REDACTED] relied on an exception from the dual consolidated loss rules under § 1.1503-2(c)(5)(ii) that [REDACTED] claims it erroneously but reasonably considered applicable. Thus, [REDACTED] claims that the returns were filed consistent with the Treas. Reg. 1.1503-2(g)(2) election having been made relying on another exception from the dual consolidation loss rules. Granting relief would not result in a lower tax liability of [REDACTED] for any of the taxable years affected by the election.

Since the letter ruling under Treas. Reg. § 301.9100 has not been issued yet, [REDACTED] through its representative [REDACTED] of [REDACTED], contacted the Service and suggested that a restricted consent to extend the statute of limitations, Form 872, should be executed. Such extension of the statute of limitations is required by Section 5.02 of the Rev. Proc. 2001-1.

Gerard A. Traficanti, Tax Law Specialist with ACC:INTL, is handling the taxpayer's § 301.9100 request. We understand that he is working on the taxpayer's request, but will not be able to complete his analysis prior to the expiration of the statute. Mr. Traficanti does not object to the issuance of a restricted consent.

DISCUSSION

Issue 1:

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). However, in accordance with the § 6501(c)(4) exception to this general rule, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of

limitations on assessment.

The running of any applicable period of limitations is not suspended for the period during which a § 301.9100 request has been filed. See, § 301.9100-3(d)(2). If the period of limitations on assessment under § 6501(a) for the taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made will expire before receipt of a § 301.9100 letter ruling, the Service ordinarily will not issue a § 301.9100 ruling. See, § 301.9100-3(c)(1)(ii); Rev. Proc. 2001-1. Therefore, the taxpayer must secure a consent under § 6501(c)(4) to extend the period of limitations on assessment. See, Rev. Proc. 2001-1, Sec. 5.02(2).

██████ filed the § 301.9100 request on ██████, which is more than nine months before the expiration of the statute of limitations. Generally, such requests under § 301.9100 should be processed by the Service, and a ruling letter issued, within 4 to 6 months after the request date. To date, however, the Service has not issued the ruling letter.

Generally, a restricted consent is a consent which extends the statute of limitations for one or more specific issues only. The statute of limitations is allowed to expire on all other issues. See, I.R.M. 121.2.22.8. Further, there is no direct express authority allowing or prohibiting the use of restricted consents in the case of pending § 301.9100 requests. For example, the Statute of Limitations Handbook, discusses the use of restricted consents only in the situations when a taxpayer is under exam, which is not applicable to ██████. The IRM prohibits signing restricted consents only in one situation - for returns involving Joint Committee Cases. See, IRM 121.2.22.8.2. This is not applicable to ██████ either. Rev. Proc. 2001-1, which describes the procedure to file § 301.9100 requests, does not answer the question whether a restricted consent is appropriate when a § 301.9100 request is pending.

In this case, we believe, that it would be appropriate for the Service to enter into a restricted consent. ██████'s § 301.9100 request has been pending for over 9 months. Additionally, ██████ is not under exam with regard to the taxable year ██████, the only currently pending issue with regard to the year ██████ is the issue of the dual consolidated losses raised by ██████ in its § 301.9100 request and the issuance of a restricted consent is not expressly prohibited by the Service in such situation. Therefore, we believe, that the extension of the statute of limitations by ██████ for the year ██████ should be restricted to the issue of dual consolidated losses and

consequential changes to other items.

Issue 2:

Under IRM 121.2.22.8.11, the restricted consent must contain a basic restrictive statement and a description of the area of consideration. The restrictive statement should be typed on the Form 872 in the space immediately below the printed text, and should read as follows:

"The amount of any deficiency assessment is to be limited to that resulting from any adjustment attributable to the dual consolidated losses of [REDACTED] ([REDACTED]), a member of the [REDACTED] consolidated group, including any consequential changes to other items based on such adjustment."

Issue 3:

Under IRM 121.2.22.8.5, any restricted consent may be signed on behalf of the Service by any person who is authorized to sign consents under Delegation Order No. 42, absent any redelegation order to the contrary concerning the signing of restricted consents. Currently, there is no redelegation order to the contrary concerning the signing of restricted consents. Therefore, any of the persons mentioned in the Delegation Order No. 42 may sign restricted consent Form 872 on behalf of the Service. They include the LMSB, International Directors, as well as the Directors of Field Operations (DFO). Since the taxpayer is a brokerage house, and its principal place of business is located in Manhattan, New York, the Financial Services DFO in New York may sign the restricted consent on behalf of the Service. His authority to sign consents has been redelegated by the same Order No. 42 to LMSB Team Managers or Territory Managers.

Under K. Dally, Special Counsel, 10/1/93

PROCEDURAL CONSIDERATIONS

The Internal Revenue Service Restructuring and Reform Act of 1998 requires the Service to notify taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the service requests that the taxpayer extend the limitations period. Such requirements are not applicable in this case since [REDACTED] itself initiated the extension of the statute of limitations, and suggested that such extension should be limited to the issues raised in [REDACTED]'s § 301.9100 request.

If you have any questions, please telephone Anna Kozoulina of our office at (212) 264-1595, ext. 291.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

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By: _____
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